

**CHAPTER 311.**  
**INTERIM RULES GOVERNING ELECTRIC AND**  
**NATURAL GAS RETAIL ACCESS PILOT PROGRAMS.**

**20 VAC 5-311-10. Applicability; definitions.**

- A. The provisions in this chapter govern solely electric and natural gas retail access pilot programs conducted by Virginia electric and natural gas public utilities.
- B. The following terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of acting as a competitive service provider shall be treated as an affiliated competitive service provider and shall be subject to the same provisions and regulations.

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or natural gas, or both, or (ii) offers to arrange for, or arranges for, the purchase of electric energy or natural gas, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-311-50; and (vi) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy or natural gas, or both, for consumption by such retail customers.

"Business day" means any calendar day or computer processing day in the Eastern U.S. time zone, in which the general office of the applicable local distribution company is open for business with the public.

"Commencement of the pilot program" means the date established by the State Corporation Commission for the beginning of each pilot program.

"Competitive energy service" means the retail sale of electricity or natural gas, or both, or any other competitive service approved by the State Corporation Commission as part of a retail pilot program by an entity other than the local distribution company as a regulated utility.

"Competitive service provider" means a person that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from any licensed competitive service provider seeking to sell such services to that customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local Distribution Company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the end-user.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or end-user.

"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from investor-owned electric utilities, electric cooperatives, the staff of the State Corporation Commission, the Office of Attorney General, and natural gas utilities and suppliers, whose objective is to formulate guidelines and practices for the exchange of information during retail access pilot programs.

## **20 VAC 5-311-20. Competitive service providers.**

A. Each competitive service provider shall comply with the following requirements with respect to its relationship with its potential or actual retail customers:

1. A competitive service provider shall, in any advertisements, solicitations, marketing materials, or customer service contracts, provide accurate, understandable information, in a manner that is not misleading. Solicitations, advertising, and marketing materials shall contain a clear and conspicuous notice of a toll-free telephone number to contact for the additional information specified in 20 VAC 5-311-20 A 2. If such information is requested, it shall be provided in writing or by electronic means.

2. The following information shall be provided to the prospective customer, in writing or by electronic means, prior to, or contemporaneously with, the written contract: (i) for

residential customers, an estimated total annual bill for a customer who uses, on a monthly basis, 1,000 kWh of electricity or 7.5 Mcf or 75 therms of natural gas, including all fees and minimum or fixed charges, exclusive of any non-recurring financial or non-financial incentives, and the total average price per kWh, Mcf, or therm based on the annual bill; (ii) the value of any non-financial incentives or non-recurring financial incentives; (iii) a statement regarding provisions for termination by the customer and by the competitive service provider; (iv) a statement of any minimum contract terms, minimum usage requirements, any required deposit, any applicable fees such as start-up fees or cancellation fees, and any minimum or fixed charges; and (v) following a clear and conspicuous caption: “**CUSTOMER’S RIGHT TO CANCEL,**” in bold face type of a minimum size of ten points, a statement that any customer may cancel its contract with a competitive service provider by notifying the competitive service provider or the local distribution company, without penalty, at any time, prior to midnight of the tenth day following notification by the local distribution company of an enrollment request as provided in 20 VAC 5-311-30 B 4. If a competitive service provider’s offer cannot be adequately described in accordance with the details described in 20 VAC 5-311-20 A 2 (i) or if the prospective customer is other than a residential customer, then the competitive service provider shall furnish similar information that will allow prospective customers to compare reasonably the full price of service if the competitive energy service is purchased from the competitive service provider to the full price of service charged by the local distribution company.

3. A competitive service provider, in arranging to provide service to a new customer, shall comply with the following requirements:

a. A competitive service provider shall enroll a customer only after the customer has affirmatively authorized such enrollment. A competitive service provider shall maintain adequate records allowing it to verify a customer’s enrollment authorization. Examples of adequate records of enrollment authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer’s verbal commitments; (iii) a recording of the customer’s verbal commitment; or (iv) electronic data exchange, provided that the competitive service provider can show that the electronic transmittal of a customer’s authorization originated with the customer. Such authorization records shall contain the customer’s name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and must be provided within five business days upon request by the customer or the staff of the State Corporation Commission. Such authorization procedures are not required where an existing customer moves to a new address and wishes to continue service with the same provider, provided that the competitive service provider is licensed to provide service to the customer’s new location.

b. Upon obtaining the customer's authorization pursuant to subdivision a above, the competitive service provider shall send, contemporaneously: (i) an enrollment request to the local distribution company consistent with the terms and conditions of the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission, and (ii) a written contract to the customer. Such materials may be hand-delivered, mailed or electronically transmitted, and shall be deemed to have been received on the date they are hand-delivered or electronically transmitted or three calendar days after the date they are mailed.

c. The customer shall have 10 calendar days from the date the customer receives notification from the local distribution company pursuant to the procedures of 20 VAC 5-311-30 B 4, to advise the local distribution company or the competitive service provider that it wishes to cancel such enrollment or contract. In the event the competitive service provider receives a cancellation request, the competitive service provider shall, normally within one business day, notify the local distribution company of the customer's cancellation in order to terminate the enrollment process. Any customer that cancels an enrollment pursuant to the procedures of 20 VAC 5-311-30 B 4 shall be deemed to have withdrawn from the contract with that competitive service provider, and shall incur no penalty or other obligation for doing so. Such contract shall thereupon be considered void from its inception and of no further effect.

d. The competitive service provider shall commence service to a customer on or after the date provided in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. The competitive service provider may request, pursuant to the local distribution company's tariff or approved pilot program, a special meter reading, in which case the enrollment may become effective on the date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.

4. At a minimum, all customer service contracts shall include: (i) the price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated; (ii) the length of the service contract; (iii) provisions for termination by the customer and by the competitive service provider; (iv) a statement of any minimum contract terms, minimum usage requirements, minimum or fixed charges, and any required deposit; (v) any applicable fees including, but not limited to start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds; (vi) a description of the dispute resolution procedures required pursuant to 20 VAC 5-311-20 A 8; (vii) following a clear and conspicuous caption: "**CUSTOMER'S RIGHT TO CANCEL,**" appearing on the front side of the contract, or immediately above the customer's signature, in bold face type of a minimum size of ten points, a statement that any customer may cancel its contract with a competitive service provider by notifying the competitive service provider or the local distribution company, without penalty, at any time, prior to midnight of the tenth day following notification by the local distribution

company of an enrollment request as provided in 20 VAC 5-311-30 B 4; and (viii) in a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service will commence.

5. A competitive service provider claiming its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such information may be made generally available through electronic means, and a written explanation shall be provided promptly upon request of any customer, prospective customer, competitive service provider, aggregator, local distribution company, or the staff of the State Corporation Commission.

6. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider shall provide to the State Corporation Commission the name and address of the entity holding such deposits or prepayments.

7. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than two months' purchase of services from the competitive service provider by that customer.

8. A competitive service provider shall have in place explicit dispute resolution procedures and clearly identify the addresses and phone numbers of persons authorized to assist customers when they have a complaint.

9. A competitive service provider shall furnish to customers 24-hour toll-free telephone numbers to call: (i) in a service emergency and (ii) for other customer inquiries regarding services provided by the competitive service provider. The 24-hour toll-free telephone numbers shall be stated on all customer-billing statements.

10. A competitive service provider shall adequately safeguard customer information, including payment history, unless the customer affirmatively authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

11. A competitive service provider may include provisions in its service contracts that provide for automatic contract renewal during and beyond the duration of the pilot program upon the same terms and conditions, provided that, in any event, the contract shall provide that (i) it will terminate if the competitive service provider's license expires, or is suspended or revoked, and (ii) once the pilot program ends, the contract is subject to termination by either party upon 30 days written notice to the other party.

12. In the event that a competitive service provider's services are terminated for any reason other than by a customer's decision to terminate the contract, the competitive

service provider shall send written notification of such termination to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate.

B. Each competitive service provider shall comply with the following provisions with respect to its relationship with the local distribution companies and transmission providers:

1. A competitive service provider shall submit to the local distribution company the full name of the competitive service provider, the type of entity (e.g., partnership or corporation), physical street and mailing addresses, and the names, telephone numbers, and e-mail addresses of appropriate contact persons, including a 24-hour emergency telephone number, and the name, title, and address of any registered agent in Virginia for service of process.

2. A competitive service provider shall furnish the local distribution company and the transmission provider proof of licensure from the State Corporation Commission to provide competitive energy services in the Commonwealth.

3. A competitive service provider shall adhere to all requirements of schedules, terms, and conditions of service under the rate schedules and tariffs approved by the State Corporation Commission or the Federal Energy Regulatory Commission, and of the local distribution company and the transmission provider, as applicable.

4. a. A competitive service provider selling electricity or natural gas, or both, at retail shall:

(1) Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers;

(2) Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, or the Federal Energy Regulatory Commission, or any successor agencies thereto;

(3) Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity; and

(4) Comply with generally accepted technical protocols applicable to particular competitive services.

b. In the event of a failure to fulfill the obligations set forth in subdivision a above, the competitive service provider shall be responsible for any applicable penalties as authorized or required by the regulator with jurisdiction over the matter.

5. An affiliated competitive service provider may use the name or logo of its affiliated local distribution company in advertising and solicitation materials. A disclaimer that clearly and conspicuously discloses that the affiliated competitive service provider is not

the same company as the local distribution company shall accompany any such use. Such disclaimers shall not be required, however, on company vehicles, clothing, or trinkets, writing instruments, or similar promotional materials. Upon complaint of any interested person, the Attorney General, staff motion, or on its own motion, the State Corporation Commission may, after notice and an opportunity for hearing, make a determination whether any such usage is misleading, and if so, take appropriate corrective actions.

6. An affiliated competitive service provider shall operate independently of its affiliated local distribution company and shall abide by the following provisions with respect to any competitive energy service it offers in the certificated service territory of the affiliated local distribution company:

a. Not later than the commencement of the local distribution company's pilot program, or the date of licensure of such affiliated competitive service provider under this chapter, whichever is later, the affiliated competitive service provider shall implement internal controls to ensure that it and its employees that are engaged in the (i) merchant operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

b. An affiliated competitive service provider shall file with the State Corporation Commission, a revised listing and description of all internal controls required in subdivision a above within 10 days subsequent to any modification of such controls as were originally provided under 20 VAC 5-311-50 A 7 as part of the requirements of the affiliated competitive service provider's application for license.

c. An affiliated competitive service provider shall document each occasion that an employee of its affiliated local distribution company, or of the transmission provider that serves its affiliated local distribution company, becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated local distribution company or the transmission provider that serves its affiliated local distribution company. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.

7. In the event that a competitive service provider's services are terminated for any reason other than a customer's decision to terminate the contract, the competitive service provider shall provide notice of the termination, by any means specified by the VAEDT,

to the local distribution company at least 30 days prior to the date that the competitive service provider's service to the customer is scheduled to terminate. In the event of a customer's decision to terminate the contract, the competitive service provider shall provide such notice to the local distribution company, normally within one business day, upon receipt of the customer's decision to terminate.

C. Competitive service providers shall be subject to the following general requirements:

1. Each person seeking to engage in the activities of a competitive service provider shall obtain a license from the State Corporation Commission prior to commencing such activities.
2. A competitive service provider shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the State Corporation Commission determine, upon complaint of any interested person, the Attorney General, staff motion, or upon its own motion, that a competitive service provider has failed to comply with any of the requirements of this chapter or a commission order related thereto, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.
3. A competitive service provider shall, to the maximum extent feasible, adhere to standard practices for exchanging data and information in an electronic medium as may be specified by the VAEDT and as specified in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. A competitive service provider shall cooperate with the VAEDT to comply on a continuing basis with the development and implementation of EDI requirements.
4. A competitive service provider providing electric service shall annually file a report with the State Corporation Commission stating: (i) to the extent feasible, fuel mix, and emissions data on at least an annualized basis; or (ii) why it is not feasible to submit any portion of such data.
5. A competitive service provider shall retain customer billing and account records and complaint records for at least three years.
6. Each affiliated competitive service provider shall maintain separate books of accounts and records.
7. The competitive service provider shall not:
  - a. Suggest that the services provided by the local distribution company are of any different quality when either electricity, natural gas, or both is purchased from a particular competitive service provider; or



- b. Suggest that the competitive energy services provided by a competitive service provider are being provided by a local distribution company rather than the competitive service provider.

## **20 VAC- 5-311-30. Local distribution companies.**

A. Each local distribution company shall comply with the following provisions with respect to its relationship with competitive service providers:

1. The local distribution company shall provide service, information and products to all competitive service providers licensed in Virginia on terms and conditions as set forth in this chapter, as provided in applicable tariffs, and as approved by the State Corporation Commission as part of a pilot program.
2. The local distribution company shall not give undue preference to an affiliated competitive service provider over the interests of any other competitive service provider related to the provision of electric transmission, distribution, generation, or ancillary services, or natural gas supply or capacity. For purposes of this subdivision, “undue preference” means a preference that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.
3. The local distribution company shall provide information related to the transmission, distribution or provision of electricity, ancillary services, or natural gas supply or capacity to an affiliated competitive service provider only if it makes such information available simultaneously, through an electronic bulletin board or similar means of public dissemination, to all other competitive service providers licensed to conduct business in Virginia. This provision shall not apply to daily operational data, information provided in response to inquiries regarding the applicability of tariffs and terms and conditions of service, or similar data provided by the local distribution company to any competitive service provider in the ordinary course of conducting business. Nothing in this provision shall require the local distribution company to disseminate to all competitive service providers information requested and deemed competitively sensitive by a competitive service provider and supplied by the local distribution company.
4. The local distribution company shall, upon request by a competitive service provider, provide such competitive service provider with the addresses of eligible pilot customers on a non-discriminatory basis consistent with the local distribution company's pilot tariff as approved by the State Corporation Commission. No other customer information about eligible pilot customers shall be provided to competitive service providers unless the customer affirmatively authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

5. The local distribution company shall not accept an enrollment request from a competitive service provider to switch a customer if that customer's account is subject to a pending disconnect notice from the local distribution company.
6. In the event the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall, normally within two business days, respond to the competitive service provider by any means specified by the VAEDT that will acknowledge (i) receipt of the competitive service provider's notice, and (ii) the date that the competitive service provider's service to the customer is scheduled to terminate.
7. Joint advertising and marketing shall be prohibited between the local distribution company and any competitive service provider unless made available to all competitive service providers upon the same price, terms, and conditions.
8. The local distribution company shall not condition the provision of any services on the purchase of any other service or product from it or any of its affiliates.
9. The local distribution company shall operate independently of any affiliated competitive service provider and shall observe the following requirements with respect to any competitive energy service offered by such affiliated competitive service provider in the local distribution company's certificated service territory:
  - a. Not later than the commencement of its pilot program, the local distribution company shall develop and implement internal controls to ensure that it and its employees that are engaged in the (i) merchant operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not provide information to an affiliated competitive service provider or to entities that provide similar functions for or on behalf of such an affiliated competitive service provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.
  - b. An affiliated local distribution company shall file with the State Corporation Commission, a listing and description of all internal controls required in subdivision a above, not later than 30 days prior to its implementation or within 10 days subsequent to any modification of such controls.
  - c. The local distribution company shall document each occasion that an employee of its affiliated competitive service provider becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated competitive service provider. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such

information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.

10. With respect to affiliate transactions, the local distribution company shall abide by the following:

a. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable, non-tariffed services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be included with the report required in subdivision b below.

b. The local distribution company shall file semi-annually for the duration of the pilot program, with the State Corporation Commission, a report that shall, at a minimum, include: the amount and description of each type of non-tariffed service provided to or by an affiliated competitive service provider; accounts debited or credited; and the compensation basis used, i.e., market price or fully distributed cost. The local distribution company shall maintain the following documentation for each agreement and arrangement where such services are provided to or by an affiliated competitive service provider and make such documentation available to staff upon request: (i) component costs (i.e., direct or indirect labor, fringe benefits, travel or housing, materials, supplies, indirect miscellaneous expenses, equipment or facilities charges, and overhead); (ii) profit component; and (iii) comparable market values, with supporting documentation.

11. The local distribution company shall not:

a. Suggest that the services provided by the local distribution company are of any different quality when either electricity, natural gas, or both is purchased from a particular competitive service provider; or

b. Suggest that the competitive energy services provided by a competitive service provider are being provided by a local distribution company rather than the competitive service provider.

12. The local distribution company may require reasonable financial security from the competitive service provider to financially safeguard the local distribution company and its customers from losses or additional costs incurred due to the non-performance of the competitive service provider. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, or other arrangements that may

be mutually agreed upon by the local distribution company and the competitive service provider. The amount of such financial security shall be commensurate with the level of risk assumed by the local distribution company, as determined by the parameters described in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. Such security shall be used to offset any losses or additional costs incurred, due to the non-performance of the competitive service provider, including the cost of replacement energy supplied by the local distribution company. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-311-30 A 13.

13. The local distribution company shall establish, and file for State Corporation Commission approval, dispute resolution procedures to address complaints alleging violations of, or disputes arising under, the provisions of 20 VAC 5-311-30. The local distribution company shall make such filing no later than 60 days prior to the commencement of the pilot program.

14. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

15. The local distribution company shall, to the maximum extent feasible, adhere to standard practices for exchanging data and information in an electronic medium as may be specified by the VAEDT and as specified in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. The local distribution company shall cooperate with the VAEDT to comply on a continuing basis with the development and implementation of EDI requirements.

B. Each local distribution company shall comply with the following provisions with respect to its relationship with its retail customers:

1. The local distribution company shall provide pilot program information and facilitate enrollment of pilot customers pursuant to pilot programs approved by the State Corporation Commission.

2. The local distribution company shall continue to allow customers to participate in its pilot program by selecting a competitive service provider until the maximum participation limits established and defined in its retail access pilot program, as approved by the State Corporation Commission, have been met.

3. The local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated at the behest of the customer or by the competitive service provider for any reason during the pilot program period.

4. Upon receipt of an enrollment request from a competitive service provider, pursuant to 20 VAC 5-311-20 A 3 b, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-311-20 A 2 (v). Such notice shall be deemed to have been received by the customer three calendar days after the date of mailing. The customer shall have 10 calendar days from the date the customer receives such notification to advise the local distribution company or the competitive service provider that it wishes to cancel such enrollment. In the event the local distribution company receives notice of a cancellation request from the competitive service provider pursuant to the provisions of 20 VAC 5-311-20 A 3 c, the local distribution company shall, normally within one business day, terminate the enrollment process. In the event the local distribution company receives a cancellation request from the customer, the local distribution company shall, normally within one business day, notify the competitive service provider of the customer's cancellation and terminate the enrollment process. Additionally, the local distribution company shall send to the State Corporation Commission a monthly report of all such cancellation requests, which report shall include: the approximate date of the enrollment, the identity of the competitive service provider, the name and address of the customer that cancelled such enrollment, and a brief statement of the reasons, if any, given by the customer for the cancellation.

5. In the event that the local distribution company is notified by a competitive service provider that a customer's service will be terminated, the local distribution company, in addition to responding to the competitive service provider as required by 20 VAC 5-311-30 A 6, shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company will provide the customer's generation or natural gas supply.

6. Pilot program customer deposits held or collected by local distribution companies shall be for only those services provided by the local distribution company to customers participating in the pilot program. Any deposit held by the local distribution company in excess of this amount shall be promptly refunded to the customer. The local distribution company may, upon a customer's return to service provided by the local distribution company, collect the generation portion of a customer deposit as permitted by the local distribution company's tariffs and 20 VAC 5-10-20.

7. Changes to terms and conditions concerning customer disconnection for non-payment shall be set forth in each local distribution company's pilot tariff approved by the State Corporation Commission.

## **20 VAC 5-311-40. Aggregators.**

A. Each person seeking to act as an aggregator shall obtain a license from the State Corporation Commission prior to conducting business as an aggregator within the Commonwealth.

B. An aggregator shall abide by the following requirements as applicable:

1. An aggregator that is also the competitive service provider or acting as an agent of a competitive service provider for two or more customers shall comply with all of the provisions of this chapter applicable to competitive service providers with respect to such customers.

2. An aggregator that does not meet the conditions in 20 VAC 5-311-40 B 1, in arranging to provide service to a customer, shall:

a. In any advertisements, solicitations, marketing materials, or customer service contracts provide accurate, understandable information, in a manner that is not misleading;

b. Disclose in writing to prospective customers, and include in each written contract: (i) the nature of the service to be provided; (ii) the length of the contract; (iii) the fees or prices that will be charged for such service, provisions for termination of the contract by the customer and the aggregator; (iv) any other terms that are necessary for the prospective customer to make an informed choice in selecting an aggregator; and (v) following a clear and conspicuous caption: “**CUSTOMER’S RIGHT TO CANCEL**,” appearing on the front side of the contract, or immediately above the customer’s signature, in bold face type of a minimum size of ten points, a statement that any customer may cancel its contract with an aggregator by notifying the aggregator, without penalty, at any time, prior to midnight of the third business day following receipt of the contract;

c. Provide to each customer a written contract, which may be hand-delivered, mailed, or electronically transmitted, and which shall be deemed to have been received on the date such contract is hand-delivered or electronically transmitted or three calendar days after the date the contract was mailed; and

d. Provide a period of three business days, commencing with the customer’s receipt of a written contract, during which time the customer may withdraw from the contract without incurring any penalty or other obligations.

3. An aggregator expecting to receive compensation from a retail customer shall, prior to contracting with customers, provide written notice to the customers or prospective customers if the aggregator is, or expects to be, compensated by one or more competitive service providers. Such notice shall identify such competitive service providers.

## **20 VAC 5-311-50. Licensure of competitive service providers and aggregators.**

A. Each person applying for a license to conduct business as a competitive service provider or an aggregator shall file the original application with 15 copies thereof with the Clerk of the State Corporation Commission. Each application shall include the following:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4.
  - a. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.
  - b. A list of states in which the applicant or an affiliate conducts business related to electricity or natural gas, the names under which such business is conducted, and a description of the businesses conducted.
5. Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.
6. Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.
7. If an affiliated competitive service provider, provide a description of internal controls it has designed to ensure that it and its employees that are engaged in the (i) merchant operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.
8. Telephone number of the customer service department or the title and telephone number of the customer service contact person.

9. Name, title, address, and telephone number, facsimile (fax) number, and e-mail address of the company liaison with the State Corporation Commission.
10. Name, title, and address of any registered agent in Virginia for service of process.
11. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission; if a domestic corporation, a copy of the certificate of incorporation from the State Corporation Commission.
12. Sufficient information to demonstrate financial fitness commensurate with the service or services proposed to be provided. Applicant shall submit the following information related to general financial fitness:
  - a. Applicant's audited balance sheet and income statement for the most recent fiscal year. Published financial information such as the Securities and Exchange Commission forms 10K and 10Q should be provided, if available.
  - b. Proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. In lieu of such minimum bond rating or guarantee, submit other evidence that will demonstrate the applicant's financial responsibility.
13. Identification of the geographic area or areas, the name of the local distribution company that is certificated to provide service in the area or areas and the associated pilot program or programs in which the applicant proposes to provide service, the type of service or services it proposes to provide, the class of customers to which it proposes to provide such services, and, if applying to sell electricity or natural gas, or both, at retail and, if feasible, access to the sources of supply it intends to use.
14.
  - a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.
  - b. Disclosure of whether any application for license or authority to conduct the same type of business as it proposes to offer in Virginia has ever been denied or whether any license or authority issued to it or an affiliate has ever been suspended, revoked or sanctioned.
  - c. If applicant has engaged in the provision of electricity or natural gas, or both, in Virginia or any other state, a report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned



outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: a description of the event, its duration, its cause, the number of customers affected, any reports, findings or issuances by regulators or electric and natural gas system reliability organizations relating to the instance, any penalties imposed, and whether and how the problem has been remedied.

15. A \$250 pilot registration fee payable to the State Corporation Commission shall accompany each initial application.

16. Sufficient information to demonstrate technical fitness commensurate with the service or services to be provided, to include:

a. The applicant's experience.

b. Identity of applicant's officers directly responsible for operations in the business to be conducted in Virginia and their experience in the generation of electricity, procurement of electricity or natural gas, or both, and the provision of energy services to retail customers.

c. If applying to sell electricity or natural gas, or both, at retail, documentation of any membership or participation in regional reliability councils or regional transmission organizations.

d. If applying to sell electricity or natural gas, or both, at retail, information concerning access to generation, supply and reserves. For electric pilots, information specifying, to the extent possible, the expected sources of electricity or electricity procurement practices that will be used to support retail sales of electricity in Virginia. For natural gas pilots, information regarding pipeline capacity and storage arrangements, including assurances that such suppliers will be able to meet the requirements of their essential human needs customers.

17. Applicants other than aggregators shall file a copy of their dispute resolution procedure for approval by the State Corporation Commission.

B. The license application shall be signed by an officer with appropriate authority under penalty of perjury that all information supplied on the application form is true and correct, and that, if licensed, applicant will abide by all applicable regulations of the State Corporation Commission.

C. Each person applying for a license to conduct business as a competitive service provider or an aggregator shall contemporaneously serve a copy of its application upon each applicable local distribution company located within the service territory or territories where the competitive service provider intends to operate.

D. Upon receipt of an application for a license to conduct business as a competitive service provider or an aggregator, the State Corporation Commission shall enter an order providing for notice to appropriate persons and an opportunity for written comment on the application.

E. A license to conduct business as a competitive service provider or an aggregator granted under this section shall expire upon the termination of the pilot program unless otherwise ordered by the State Corporation Commission. The State Corporation Commission will consider extending or converting licenses issued under this chapter to allow licensed entities to continue to provide service after the termination of the pilot programs.

F. If any application fails in any respect to be complete, the application will not be regarded as filed. The State Corporation Commission will take no action on any application until deemed complete and filed.

## **20 VAC 5-311-60. General provisions.**

A. Any request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. Any natural gas retail access pilot program previously approved by the State Corporation Commission and in operation prior to the adoption of this chapter, as well as any competitive service provider or aggregator participating in such programs, shall be required to comply with the provisions of this chapter within 120 days from the chapter's adoption or from the date of denial of a waiver request filed under 20 VAC 5-311-60 A, whichever is later.

C. Each local distribution company, competitive service provider, and aggregator shall comply with the standards for billing information set forth in § 56-592 D 1, § 56-592 D 2, and § 56-592 D 4 of the Code of Virginia and with such standards that may be established by the State Corporation Commission pursuant to § 56-592 D of the Code of Virginia.

D. A local distribution company, a competitive service provider, or an aggregator shall bear the responsibility for meter reading and billing as provided or allowed by law and as approved by the State Corporation Commission.

E. A customer payment received in partial payment of a single consolidated bill shall be applied as designated by the customer, or, in the absence of a customer designation, to arrearages owed the local distribution company, then to arrearages owed the competitive service provider, then to current charges of the local distribution company, and then to current charges of the competitive service provider.

F. A competitive service provider and an aggregator shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any information contained in its application that has changed regarding its affiliate status with a local distribution company; and (iii) any changes to information provided pursuant to 20 VAC 5-311-50 A 14 a.

G. The State Corporation Commission shall have the right to inspect the books, papers, records and documents, and to require special reports and statements, of any competitive service provider or aggregator regarding qualifications to conduct business within the Commonwealth, in support of affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider or an aggregator.

H. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under any applicable law or regulation. Enforcement actions may specifically include, without limitation, the refusal to issue any license for which application has been made, and the refusal to renew or the revocation or suspension of any license previously granted. Any person aggrieved by a violation of these regulations may pursue any civil relief that may be available under state or federal law, including, without limitation, private actions for enforcement of these regulations, without regard to or first pursuing the remedies available from the State Corporation Commission hereunder.